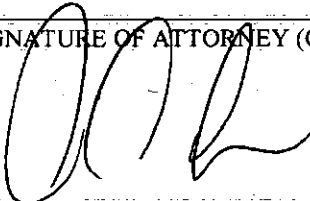


B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFFS JAMES D CUNNINGHAM		DEFENDANTS NASARIAN CAPITAL, LLC	
ATTORNEYS (Firm Name, Address, and Telephone No.)		ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) VIOLATION OF AUTOMATIC STAY BEFORE ORDER GRANTING RELIEF WAS LEGALLY ENFORCEABLE BEFORE I WAS EVEN SERVED THE ORDER, AS WELL AS WHILE THE STAY WAS LEGALLY IN PLACE.			
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)			
FRBP 7001(1) - Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) - Validity, Priority or Extent of Lien <input checked="" type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) - Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) - Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) - Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) - Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		FRBP 7001(6) - Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) - Injunctive Relief <input checked="" type="checkbox"/> 71-Injunctive relief - imposition of stay <input type="checkbox"/> 72-Injunctive relief - other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input checked="" type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Claim or Cause of Action <input checked="" type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case - 15 U.S.C. §§78aaa et seq. <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input checked="" type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input checked="" type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$	
Other Relief Sought			

FILED IN CLERK'S OFFICE
 U.S. BANKRUPTCY COURT
 NORTHERN DISTRICT
 OF GEORGIA
 2018 SEP 17 PM 1:02
 M. REGINALD
 DEPUTY CLERK

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR <i>JAMES D. Cunningham</i>		BANKRUPTCY CASE NO. <i>18-59411 BEM</i>
DISTRICT IN WHICH CASE IS PENDING <i>NDGA</i>	DIVISION OFFICE <i>ATLANTA</i>	NAME OF JUDGE <i>BEM</i>
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE <i>9-17-18</i>	PRINT NAME OF ATTORNEY (OR PLAINTIFF)	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT
OF GEORGIA

2018 SEP 17 PM 1:02

IN RE:)
JAMES D. CUNNINGHAM) 18-59411 BEM
DEBTOR) Chapter 13
)
) **JURY TRIAL DEMAND**

M. REGINA THOMAS
CLERK

Anice Nigam
DEPUTY CLERK

NOTICE OF REMOVAL PURSUANT TO 28 U.S.C. 1452

Defendant James D. Cunningham, hereby files this Notice of Removal pursuant 28 U.S.C. 1452. In support of this notice, Defendant states as follows:

1. Cunningham is a Defendant in a civil action commenced on August 27, 2018, and served on August 28, 2018, in the Magistrate Court of Dekalb County, CAN No. 18D55396 (the „Magistrate Court Action“). Pursuant to sections 1452 of Title 28 of the United States Code, Defendant removes this case to the United States Bankruptcy Court for the Northern District of Georgia, the judicial district in which this action is pending.
2. Removal of this action is appropriate under U.S.C. 1441 and 1452, as Defendant is asserting federal bankruptcy causes of action.
3. CAN No. 18D55396 establishes that Defendant's right to relief necessarily depends on resolution of a substantial issue concerning a core proceeding of bankruptcy law under 28 U.S.C. Title 11, as the subject matter contemplates repeated violations of the automatic stay prior to any order of relief from the stay becoming legally enforceable.
4. This Court therefore has original jurisdiction of the above entitled action

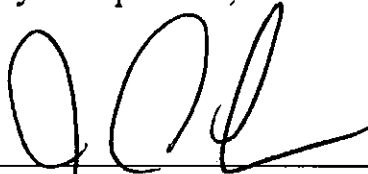
pursuant to U.S.C. 1331, and removal to this Court of this action is

proper pursuant 28 U.S.C. 1441 and 1452.

5. AS required by 28 U.S.C 1446, a copy of all process and pleadings in the Magistrate Court Action is attached hereto as Exhibit „A“, such that Defendant is possession of; Defendant will provide anysuch additional pleadings to the Court, if and as such become available to Defendant.
6. A removal notice together with a copy of Defendant's Notice of Removal Pursuant to 28 U.S.C. 1452 shall be filed with the Clerk of Dekalb County Magistrate Court, State of Georgia, and shall be served upon Plaintiff.

WHEREFORE, for the foregoing reasons, James D. Cunningham respectfully requests that this action proceed in this Court, pursuant 28 U.S.C. 1452.

Respectfully submitted this 17th day of September, 2018.



James D. Cunningham
4313 Executive Drive
Stone Mountain, GA 30083

EXHIBIT A

MAGISTRATE COURT OF DEKALB COUNTY, STATE OF GEORGIA
DISPOSSESSORY WARRANT

NAJARIAN CAPITAL LLC
6065 ROSWELL ROAD NE STE 880
ATLANTA GA 30328 470-639-8910

EXPEDITED

VS

CASE # 18D55396

JAMES DANIEL CUNNINGHAM, , , , ,
AND ALL OTHER OCCUPANTS
4313 EXECUTIVE DR.
STONE MOUNTAIN GA 30083

Attorney:
c2c/NAJARIAN CAPITAL LLC
Evict #

Personally appeared the undersigned who upon oath says that he is **AGENT** for the owner of said premises, and that Defendant is in possession as tenant of premises at the above address in DeKalb County

FURTHER:

TENANT FAILS TO PAY THE RENT WHICH IS NOW DUE;POSSESSION;

The said owner desires and has demanded possession of said house and premises, and the same has been refused by the said defendant and affiant makethis affidavit that a warrant may issue for the removal of said defendant together with his property from said house and premises

PLAINTIFF PRAYS:

- (a) judgment for the past due rent in the amount of \$4,200.00 for the month(s) of JUNE;JULY;AUGUST;
- (b) rent accruing up to the date of judgment or vacancy at the rate of \$1,400.00 per month
- (c) Other: \$ - TENANT IS TO PAY COURT COSTS OF \$124.00.

"By affixing this electronic verification, oath, or affidavit to the pleading(s) submitted to the court and attaching my electronic signature hereon, I do hereby swear or affirm that the statements set forth in the above pleading(s) are true and correct."

Affiant: /s/OKSANA SEPICH 8/27/2018

SUMMONS

TO THE MARSHAL of the State Court of DeKalb County or his lawful deputies, GREETINGS:

The defendant herein is hereby commanded and required personally or by attorney to file with the Clerk of the Magistrate Court of DeKalb County, 2nd Floor, Suite 270, Administrative Tower, DeKalb County Courthouse, 556 N. McDonough St., Decatur, Georgia within seven (7) days from the date of service of the within affidavit and summons(or on the first business day thereafter if the seventh day falls on Saturday, Sunday or legal holiday) then and there to answer said affidavit in writing or orally (orally means in front of a deputy clerk). If such answer is not made to said affidavit on or before the 5 day of SEP, 2018, a writ of possession shall issue instantanr as by law provided, and a judgment by default will be taken against you for all rents demanded in the complaint.

WITNESS, the Honorable Judges of said Court

PRIVATE PROCESS SERVER AFFIDAVIT OF SERVICE

I have served the foregoing Affidavit and Summons on the Defendant(s) by delivering a copy of same;

() PERSONALLY () DEFENDANT NOT FOUND AT WITHIN ADDRESS ON SAID SUMMONS AND AFFIDAVIT

() NOTORIOUSLY to a person sui juris residing on the premises (NAME) _____ Age _____ Wt. _____ Ht. _____

(X) TACK & MAIL By posting a copy to the door of the premises and depositing a copy in the U.S. Mail, First Class in an envelope properly addressed after attempting personal service. Said copy containing notice to the Defendant(s) to answer at the hour and place in said summons.

DATE OF SERVICE: August _____ 2018

Professional Process Server:

MAGISTRATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

NAJARIAN CAPITAL LLC)
) Case # 18D55396
vs)
) JURY DEMAND
JAMES DANIEL CUNNINGHAM)

DEFENDANT'S ANSWER
and
MOTION TO DISMISS FOR LACK OF JURISDICTION

Comes now Defendant James Daniel Cunningham and files his Answer and Motion to Dismiss for Lack of Jurisdiction.

Plaintiff has no legal right in support of this claim.

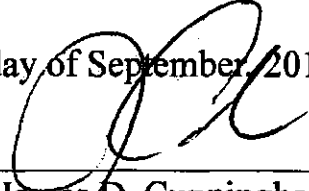
No legal notice was given Defendant.

No lease exists between Plaintiff and Defendant for the amount stated in Defendant's claim, or any other amount – there is no lease agreement between these parties relative to the subject property or any other property.

Jurisdiction over this matter lies in the U.S. Bankruptcy Court Northern District of Georgia, Case No. 18-59411 BEM.

In consideration of the within and foregoing, Defendant respectfully moves this Court to DISMISS this action with prejudice.

Submitted this 5th day of September, 2018 by:




James D. Cunningham
4313 Executive Drive
Stone Mountain, GA 30083

180917-01 18-05223
JURY
mm

Certificate of Service

I, the undersigned, do hereby certify that I have, this 5th day of September, 2018, served the within and foregoing upon the following, with proper first class postage applied.

Oksana Sepich
Najarian Capital, LLC
6065 Roswell Road, Suite 880
Atlanta, GA 30328



James D. Cunningham

09/17/18 13:18:07
mm

MAGISTRATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

NAJARIAN CAPITAL LLC)
) Case # 18D55396
)
vs)
) JURY DEMAND
JAMES DANIEL CUNNINGHAM)

DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF
MOTION TO DISMISS FOR LACK OF JURISDICTION

2018 SEP 14 PM 11:21
FILED

Comes now Defendant James Daniel Cunningham and files his Supplemental Brief in Support of His Motion to Dismiss for Lack of Jurisdiction.

Jurisdiction over this matter lies in the U.S. Bankruptcy Court Northern District of Georgia, Case No. 18-59411 BEM.

On August 31, 2018, Defendant timely filed his BRCP Rule 9023 Motion to Amend Judgment [Ex. A] against that court's August 17, 2018 Order Denying Motion to Continue and Motion to Recuse or Disqualify Judge and Trustee and Change of Venue or in the alternative Voluntarily Dismiss and Notice of D.O.J. Complaint. The motion is pending and enforcement of the order is stayed by law, with jurisdiction over the Defendant and the subject property remaining in the Bankruptcy Court.

On August 24, 2018 the Bankruptcy court entered its Order Granting Motion to Validate Foreclosure Sale. (Ex B)

Plaintiff has unclean hands.

On August 27, 2018 Plaintiff filed the instant action in this Court, and did so without standing. The Order Plaintiff moved under had not yet become legally

enforceable, and had not even been served upon Defendant yet.

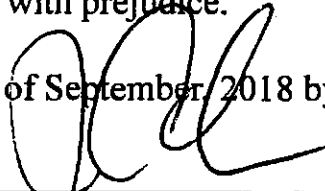
Also on August 27, 2018 Plaintiff sent a representative to Defendant's home to harass Defendant, and before the court order Plaintiff moved under had become legally enforceable.

Also on August 27, 2018 Plaintiff engaged Defendant in a series of harassing emails, even after Defendant's repeated admonishment that Plaintiff had no legal right to do so.

On September 5, 2018 Defendant filed his Rule 9023 Motion to Amend Judgment against the Order Granting Motion to Validate Foreclosure. (Ex C). The motion is pending and enforcement of the order is stayed by law, with jurisdiction over the Defendant and the subject property remaining in the Bankruptcy Court.

In consideration of the within and foregoing, Defendant respectfully moves this Court to DISMISS this action with prejudice.

Submitted this 14th day of September, 2018 by:



James D. Cunningham
4313 Executive Drive
Stone Mountain, GA 30083

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT
OF GEORGIA

IN RE:)
) 18-59411 BEM
JAMES D. CUNNINGHAM)
) Chapter 13
DEBTOR)

2018 AUG 31 PM 3:45

M. REGINA THOMAS
CLERK
BY *[Signature]*
DEPUTY CLERK

RULE 9023 MOTION TO AMEND JUDGMENT

Comes now James D. Cunningham, Debtor in the above styled action, and moves this Court to AMEND IT'S AUGUST 17, 2018 ORDER and JUDGMENT. Doc # 36

The Court denied Debtor his constutionally protected rights to due process by not allowing Debtor to be heard, and any such jugsmnt risaing oukt of the August 15, 2018 hearing is void. *[Signature]*

BRIEF IN SUPPORT TO FOLLOW

In consideration of the within and foregoing, Debtor moves this Court to amend its August 17, 2018 Order and Judgment and continue the August 15, 2018 hearing.

Respectfully submitted this 31st day of August, 2018.


[Signature]
James D. Cunningham
4313 Executive Drive
Stone Mountain, GA 30083

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have, this 31st day of August, 2018, served the within and foregoing **MOTION** upon the following, with proper first class postage applied.

Rubin Lubin, LLC
3145 Avalon Ridge Place #100
Peachtree Corners, GA 30071

Sonya N. Buckley Attorney for the
Chapter 13 Trustee
191 Peachtree St. Suite 2200
Atl, GA 30303



James D. Cunningham



IT IS ORDERED as set forth below:

Date: August 21, 2018

**Barbara Ellis-Monro
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

JAMES DANIEL CUNNINGHAM,

Debtor.

FREEDOM MORTGAGE CORPORATION,

Movant,

v.

JAMES DANIEL CUNNINGHAM,

Respondent.

CASE NO. 18-59411-BEM

CHAPTER 13

Contested Matter

ORDER GRANTING MOTION TO VALIDATE FORECLOSURE SALE

This matter came before the Court on August 15, 2018, at 2:15 p.m., for a hearing on Freedom Mortgage Corporation's ("Movant") Amended Motion to Validate Foreclosure Sale [Doc. 25] (the "Motion") and Debtor's Response and Motion to Deny Amended Motion to

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT
OF GEORGIA

IN RE:)
) 18-59411 BEM
JAMES D. CUNNINGHAM)
) Chapter 13
DEBTOR) JURY DEMAND

2018 SEP -5 PM 3:25

M. REGINA THOMAS

Alice M. Thomas
DEPUTY CLERK

RULE 9023 MOTION TO AMEND JUDGMENT

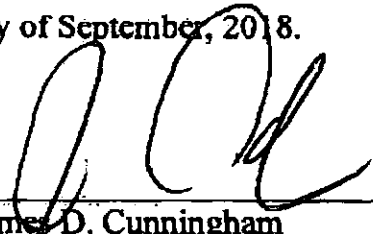
Comes now James D. Cunningham, Debtor in the above styled action, and moves this Court to AMEND ITS AUGUST 21, 2018 ORDER and JUDGMENT [Doc. 38].

The Court denied Debtor his constitutionally protected rights to due process by not allowing Debtor to be heard, and any such judgment rising out of the August 15, 2018 hearing is void.

BRIEF IN SUPPORT TO FOLLOW

In consideration of the within and foregoing, Debtor moves this Court to amend its August 21, 2018 Order and Judgment [Doc. 38] and continue the August 15, 2018 hearing.

Respectfully submitted this 5th day of September, 2018.



James D. Cunningham
4313 Executive Drive
Stone Mountain, GA 30083

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have, this 5th day of September, 2018, served the within and foregoing upon the following, with proper first class postage applied.

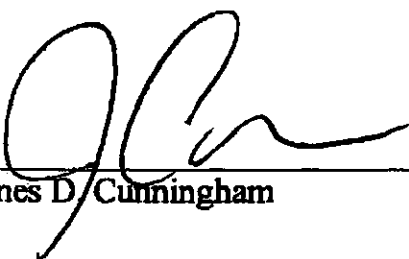
Rubin Lubin, LLC
3145 Avalon Ridge Place #100
Peachtree Corners, GA 30071

Sonya N. Buckley Attorney for the
Chapter 13 Trustee
191 Peachtree St. Suite 2200
Atl, GA 30303

Joshua G. Crowe
48 Northlake Drive
Hartwell, GA 30643

John Turner
5013 Cagle Mill Rd.
Lula, GA 30554-2727

Oksana Sepich
Najarian Capital, LLC
6065 Roswell Road, Suite 880
Atlanta, GA 30328



James D. Cunningham

Certificate of Service

I, the undersigned, do hereby certify that I have, this 14th day of September, 2018, served the within and foregoing upon the following, with proper first class postage applied.

Oksana Sepich
Najarian Capital, LLC
6065 Roswell Road, Suite 880
Atlanta, GA 30328

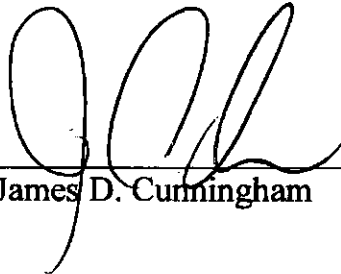


James D. Cunningham

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have, this 17th day of September, 2018, served the within and foregoing upon the following, with proper first class postage applied, and also by email.

Oksana Sepich
Najarian Capital, LLC
6065 Roswell Road, Suite 880
Atlanta, GA 30328
Oksana@jarhouse.com



James D. Cunningham